

VICTOR A. G. SCHMIDT

IBLA 78-439

Decided September 5, 1978

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claim null and void. AA-14984.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Victor A. G. Schmidt, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Victor A. G. Schmidt has appealed from the April 11, 1978, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring the Discovery Fraction Placer Mining Claim null and void ab initio. The claim is located in sec. 11, T. 19 N., R. 1 E., Seward meridian, Alaska.

The decision appealed from states that the lands involved were first withdrawn on April 14, 1921, when the Federal Power Commission filed an application for Power Project No. 207. On April 8, 1963, the State of Alaska filed a general purposes selection application, A-058952, covering all of T. 19 N., R. 1 E., Seward meridian, Alaska. On March 3, 1967, the State of Alaska was given a preference right to select the lands within Power Project No. 207 by PLO No. 4163. On

April 4, 1967, the State exercised its preference right to select all the land made available by PLO No. 4163. The decision cites 43 CFR 2627.4(b) which states in part: "Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly describing the lands * * *." The decision declared the claim null and void ab initio because the lands had been segregated from the operations of the mining laws since April 14, 1921, by Power Project No. 207 and were later selected by the State under selection application A-058952 pursuant to 43 CFR 2627.4(b).

In an appeal document filed on June 2, 1978, appellant requested an extension of time through June 30, 1978, in order "to produce documents which will substantiate the fact that my claim was staked and recorded prior to April 8, 1963, the date on which Alaska made its general purposes selection."

An extension to and including June 30, 1978, was granted by the Board on June 7. However, appellant filed no additional documents or statements in support of the appeal.

The file contains the location notice for the claim of one F. S. Pettyjohn (DBA) Black Creek Mining Co. The notice indicates that it was posted on June 15, 1973, and recorded on June 19, 1973. Appellant acquired the claim from Pettyjohn by quitclaim deed on July 27, 1977.

[1] The land in issue was segregated from location under the mining laws as of April 8, 1963, when the State filed its selection application thereon. Therefore, it was not open to mineral location on June 15, 1973, when Pettyjohn located the claim. It is established that a mining claim located on land segregated from mineral entry is properly declared null and void ab initio. Janelle R. Deeter, 34 IBLA 81, 83 (1978); Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom., Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970); Sally Lester, 31 IBLA 43 (1977); W. R. Stickler, 27 IBLA 267 (1976).

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

